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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

THE PEOPLE,

Plaintiff and Respondent,

v.

MICHELL CORTEZ,

Defendant and Appellant.

B205525

(Los Angeles County
Super. Ct. No. LA056735)

APPEAL from a judgment of the Superior Court of Los Angeles County,
Martin Herscovitz, Judge. Affirmed.

Kiana Sloan-Hillier, under appointment by the Court of Appeal, for Defendant and Appellant.

Edmund G. Brown, Jr., Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Pamela C. Hamanaka, Senior Assistant Attorney General, Scott A. Taryle and David A. Wildman, Deputy Attorneys General, for Plaintiff and Respondent.

Michell Cortez was convicted by jury of three counts of forgery by possessing a blank or unfinished check with the intent to defraud (Pen. Code, § 475, subd. (b)),¹ as well as other theft-related offenses; and he admitted allegations regarding two separate prior prison terms. He was sentenced to nine years eight months in state prison. On appeal from the judgment, Cortez contends he could only have been convicted of two of the three counts of violating section 475, subdivision (b). We affirm the judgment.

FACTUAL AND PROCEDURAL BACKGROUND

As a driver for Larry Nava, owner of Larry's Custom Furniture and Upholstery, Cortez picked and delivered furniture to residences, using the company truck. Cortez typically carried with him a red notebook.

On July 5, 2007, Cortez picked up some furniture from Joyce Kurtz's residence. Later that day, Kurtz arrived home and discovered her video camera and accessories were missing.

On July 27, 2007, Cortez delivered furniture to the residence of Sydney Field. Field had ordered, from her bank, two boxes of new checks; she had received only one box in the mail.

On August 17, 2007, Nava found inside Cortez's red notebook a checkbook belonging to Sydney and Larry Field and one of Nava's own blank checks. Nava kept two checkbooks in the glove compartment of the company truck driven by Cortez. Nava realized the first check was missing from each checkbook. In contacting his bank, Nava learned that one missing check had been cashed for \$150 on August 15, 2007, without his knowledge or consent.

At the end of August 2007, Nava contacted police and then confronted Cortez who insisted he had found Nava's missing checks and the Fields' checkbook in a trash can. Nava fired Cortez on August 31, 2007, and police arrested him the same day. Cortez later telephoned Nava from jail and admitted having taken Nava's missing checks and the

¹ Statutory references are to the Penal Code.

Fields' checkbooks, but Cortez denied having stolen Kurtz's camera. Cortez offered to repay Nava for the \$150 he had stolen from Nava's account and for whatever damages he had caused to Nava's business.

Mansour Sahigian Kalimi had helped Cortez in the past with some business filings, and the two of them met outside Kalimi's residence on August 29, 2007. The following day, Kalimi came home to discover his apartment had been burglarized. Missing were a laptop computer, and \$3,000 in cash, a DVD player, checks made payable to him, a credit card statement and other items.

In searching Cortez's person, car and residence on August 31, 2007, police recovered two counterfeit driver's licenses, \$3,761 in cash, some checks made payable to Kalimi, a credit card statement belonging to Kalimi, and Kurtz's digital camera and accessories. The digital camera contained photographs of Cortez.

Cortez was charged by information with two counts of first degree burglary (§ 459, count 1 - Kurtz; count 7 - Kalimi). As to count 1, it was specially alleged that another person, other than an accomplice, was present during the burglary (§ 667.5, subd. (c)). Cortez was also charged with two counts of grand theft of personal property (§ 487, subd. (a), count 2 - Kurtz; count 8 - Kalimi), one count of forgery (§ 470, subd. (d), count 3 - Nava's check cashed for \$150), three counts of forgery by possessing a blank or unfinished check with the intent to defraud (count 4 - Nava's other missing check; count 5 - the Fields' checkbook; count 9 - Kalimi's checks), one count of receiving stolen property (§ 496, count 10), one count of possessing a counterfeit government seal (§ 472, count 11), one count of possessing a forged driver's license (§ 470b, count 12) and one count of theft by acquiring or retaining the account information of an access card (§ 484e, subd. (d), count 13). As to all counts, the information specially alleged Cortez had served two separate prison terms for felonies (§ 667.5, subd. (b)).

With the exception of count 2, a jury convicted Cortez of all counts and found true the section 667.5, subdivision (c) enhancement allegation.² As to count 2, Cortez was found guilty of the lesser included offense of petty theft. Cortez then admitted the two prior prison term convictions for purposes of section 667.5, subdivision (b).

The trial court sentenced Cortez to an aggregated state prison term of nine years four months, consisting of the four-year middle term on count 1; a consecutive one-third of the middle term or eight months each on counts 3, 5 and 12; a consecutive one-third the middle term or 16 months on count 7, and two-one year prior prison term enhancements. The court imposed a concurrent two-year term on count 4 and stayed sentencing on counts 8, 9, 10, 11 and 13 pursuant to section 654.

DISCUSSION

Section 475, subdivision (b) provides, “Every person who possesses any blank or unfinished check, . . . whether real or fictitious, with the intention of completing the same or the intention of facilitating the completion of the same, in order to defraud any person, is guilty of forgery.” Cortez was charged and convicted of violating section 475, subdivision (b) on or about August 17, 2007, against Larry Nava (count 4), and Larry and Sydney Field (count 5). Cortez contends counts 4 and 5 actually comprised a single violation and offense, so that count 4 must be reversed.³ He relies primarily on *People v.*

² Cortez testified at trial and denied committing the offenses. He claimed to have found Kurtz’s camera in the delivery truck after leaving the residence and surmised it had been placed there by a child at the Kurtz residence. He claimed to have found the checkbooks in the trash or on the ground and had retrieved them to give to Nava. He testified Nava had written him a personal check for \$150. Cortez denied that any of Kalimi’s stolen property had been in his possession, and suggested someone named Jimmy may have stolen from Kalimi and then left the items in Cortez’s car.

³ As the trial court instructed the jury and the prosecutor argued, counts 4, 5 and 9 pertained to the check(s) of Larry Nava, Larry and Sydney Field, and Mansour Kalimi, respectively. Cortez was convicted as charged in count 9 of violating section 475, subdivision (b) against Mansour Kalimi on about August 31, 2007. Cortez is not disputing his conviction or stayed sentence as to this count.

Bowie (1977) 72 Cal.App.3d 143 (*Bowie*), a decision of Division Five of this court, and *People v. Carter* (1977) 75 Cal.App.3d 865 (*Carter*), in which Division Four followed and slightly expanded upon *Bowie*. We first summarize those decisions.

In *Bowie*, the defendant was convicted of 11 counts of possessing blank or unfinished checks with intent to defraud, in violation of former section 475, the essence of which now appears in section 475, subdivision (b).⁴ “The 11 counts involved 11 checks of a defunct corporation . . . , each in the amount of \$198.45,” which Bowie had together sold to an undercover agent. (*Bowie, supra*, 72 Cal.App.3d at p. 146.) “[A]ppellant moved to consolidate the 11 counts into one count, on the ground that his possession of the 11 identical blank checks was a single act which constituted but one violation of the statute.” (*Id.* at p. 156.) Holding that the denial of this motion was error, the court found “determinative” (*ibid.*) *People v. Puppilo* (1929) 100 Cal.App. 559, which had held that two counts of unlawful firearms possession, allegedly committed at the same time and place with respect to two guns, involved a single offense. The court in *Puppilo* noted that the criminal act was possession of a firearm, and that although the statute referred to firearms in the singular, the singular included the plural. (*Id.* at pp. 563-564.) The *Bowie* court found unpersuasive the argument “that there were 11 ‘potential victims’” of the checks (*Bowie*, at p. 157), and it cited authority that a single receipt of properties stolen from separate victims also constituted one offense. On the other hand, the court noted, receipt of such property at separate times had been held to constitute separate offenses. The court reversed 10 of the 11 counts of conviction. (*Ibid.*)

⁴ Former section 475, which was repealed in 1998 (Stats. 1998, c. 468, § 3, p. 2705) provided “Every person who . . . has or keeps in his possession . . . any blank or unfinished check, . . . with intention to fill up and complete such blank and unfinished . . . check, . . . or procure the same to be filled up and completed in order to utter or pass the same, or to permit, or cause, or procure the same to be uttered or passed, to defraud any person, is punishable by imprisonment in the state prison . . . or by imprisonment in the county jail for not more than one year.” (*Bowie, supra*, 72 Cal.App.3d at p. 156.)

Carter, supra, 75 Cal.App.3d 865, involved three counts of possessing a completed check with fraudulent intent, in violation of former section 475a, presently covered by section 475, subdivision (a). In a car search, the appellants were found in possession of three groups of checks, drawn on the same account but made out to three different payees. Appellants were charged and convicted of three counts, each involving a check to a different payee. The court found *Bowie, supra*, 72 Cal.App.3d 143, indistinguishable. The court concluded that the similarity of the offenses addressed and the identity of punishment prescribed by former section 475a and former section 475 (the statute in *Bowie*) signified that the Legislature must have intended no difference between them as to the number of offenses encompassed by a single possession of several offending checks. The number of victim payees was again not considered significant. The court therefore reversed two of the three convictions. (*Carter, supra*, at p. 872.)

Cortez urges that we follow *Bowie* and *Carter* and reverse his conviction on count 4 as duplicative. But the rationale of the two cases does not compel that result. As urged by the People, counts 4 and 5 involved the checks of separate individuals. By this, the People mean the two violations of section 475, subdivision (b) involved two different account holders: Larry Nava (count 4) and Sydney and Larry Field (count 5). This circumstance did not appear in either *Bowie* or *Carter*, in each of which all of the checks had been drawn on a single corporate account; neither case considered the divisibility of possession of checks fraudulently attributable to multiple innocent persons, but considered only that checks from the same account might be passed to different persons. We believe the potential and actual injury to such victims, financial or personal, from the unauthorized use of their financial instruments does provide a reason for treating separately offenses involving them. (Cf. *People v. Butler* (1996) 43 Cal.App.4th 1224, 1248.)

DISPOSITION

The judgment is affirmed.

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ZELON, J.

We concur:

PERLUSS, P. J.

JACKSON, J.